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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,623	07/02/2003	John G. Kucera	025636-0114	4042
26371	7590	06/25/2004		
FOLEY & LARDNER				EXAMINER
777 EAST WISCONSIN AVENUE				JIANG, CHEN WEN
SUITE 3800				
MILWAUKEE, WI 53202-5308				ART UNIT
				PAPER NUMBER
				3744

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/612,623	KUCERA, JOHN G. <i>[Signature]</i>
	Examiner	Art Unit
	Chen-Wen Jiang	3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on 04 May 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-5,7-11 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,7-11 and 13-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Koble (U.S. Patent Number 3,197,183).

Koble discloses an evaporative cooler as shown in Figs. 1,3 and 6. Referring to Fig. 1, the cooler comprises a housing having a water sump, a blower 16 and a pad 18 may be pivoted outwardly into a solid line position and may be disposed in a broken line position A wherein the outer side of the pad 18 is substantially flush with the outer side of the cooler frame. Referring to Fig.6, a conventional pivot pin 31 is located at one side of the evaporative cooler frame at opposite sides of the opening in which the pad frame is pivotally mounted.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5,7-10 and 17-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koble (U.S. Patent Number 3,197,183).

In regarding to 2-5,7-10 and 17-10, it is noted that applicant recites a detail pad frame for the evaporative cooler. Upon a close review of applicant's specification, it appears that the claimed design does not have any criticality and/or lead to any new and unexpected results. Therefore, it would have been obvious to one of ordinary skill in the art to select the claimed frame structure for the evaporative cooler pad. The fact that the applicant places the pad in the claimed frame is mere matter of engineering design choice which, in absence of a statement regarding criticality or new and unexpected results. Therefore, it would have been obvious to one of ordinary skill in the art to have selected the claimed structure since these particular parameters provide pad supporting that are no better or provided improved performance over that which is commonplace in the prior art.

5. Claims 2-5,7-10 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koble (U.S. Patent Number 3,197,183) in view of Morrison et al. (Des. 244,691).

Koble discloses an evaporative cooler as shown in Figs.1,3 and 6. Referring to Fig.1, the cooler comprises a housing having a water sump, a blower 16 and a pad 18 may be pivoted outwardly into a solid line position and may be disposed in a broken line position A wherein the outer side of the pad 18 is substantially flush with the outer side of the cooler frame. Referring to Fig.6, a conventional pivot pin 31 is located at one side of the evaporative cooler frame at opposite sides of the opening in which the pad frame is pivotally mounted. However, Koble does not disclose detail of the pad frame. Morrison et al. disclose a pad panel (Figs.2 and 3) in the same field of endeavor for the purpose of supporting pad. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Koble with a panel frame for the pad in view of Morrison et al. so as to support pad.

6. Claims 11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koble and Morrison et al. as applied to claims 2-5,7-10 and 17-20 above, and further in view of Johnson et al. (U.S. Patent Number 5,857,350).

Koble and Morrison et al. disclose the invention substantially as claimed. However, Koble and Morrison et al. do not disclose two opposite pads in an evaporative cooler. Johnson et al. disclose pads located on all four sides of the housing in the same field of endeavor for the purpose of delivering conditioned air. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of Koble and Morrison et al. with pads on opposite sides in view of Johnson et al. so as to deliver conditioned air to space.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Goettl (U.S. Patent Number 3,223,393), Bishop (Fig. 2) (U.S. Patent Number 3,774,377) and Vigansky (Figs.6 and 7) (U.S. Patent Number 5,765,544) are made of record as relevant prior art.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (703) 308-0275. The examiner can normally be reached on Tuesday-Friday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on (703) 308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang  
Primary Examiner

A handwritten signature in black ink, appearing to read "CJW".